

No. 03-16-00019-CV

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**In the Court of Appeals  
for the Third Judicial District  
Austin, Texas**

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EMPOWER TEXANS, INC. AND MICHAEL QUINN SULLIVAN,  
*Appellants,*

v.

THE STATE OF TEXAS ETHICS COMMISSION, ET AL.,  
*Appellees.*

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On Appeal from the  
53rd Judicial District Court, Travis County

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**SUGGESTION OF MOOTNESS**

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**TO THE HONORABLE THIRD COURT OF APPEALS:**

Yesterday, Appellees filed a notice of nonsuit of the underlying enforcement action in the district court, with prejudice. The notice explains that statements made in the Appellants' briefing moot the underlying proceedings. A copy of the filing is attached for the Court's convenience.

This case is an attempt to enjoin an administrative subpoena, sidestepping the bar on interlocutory appeal when a trial court denies a motion to quash an adminis-

trative subpoena. *See Pelt v. State Bd. of Ins.*, 802 S.W.2d 822, 827 (Tex. App.—Austin 1990, no writ). The nonsuit, with prejudice, of the underlying motion to enforce the subpoena removes any live controversy. There is no longer anything to enjoin and, as a result, no longer any justiciable question to be resolved in the current appeal.

This appeal is moot, moreover, because the judicial admission removes any controversy between the parties regarding the result of this appeal. As explained by the Commission in the Appellees' Brief, while a corporation's political-committee activities can be regulated like any person's, Texas law imposes a \$500 minimum requirement to trigger that oversight. Appellees' Br. at 28-33. The reply brief in this case judicially admits that the total amount of money at issue is less than \$500. Reply Br. at 2 & n.1. To the extent any justiciable question survives dismissal of the Commission's lawsuit to enforce the subpoena, the statement that less than \$500 is at issue establishes as a matter of law that Empower Texans's activities do not trigger the Election Code's provisions. Because there is no dispute that the Election Code does not apply to the facts admitted in the Reply Brief, there is no longer a dispute between the parties sufficient to support jurisdiction—and any complaint to the Commission on these facts must also be dismissed.

A lawsuit must be dismissed for mootness if the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. *Camarena v. Tex. Employment Comm'n*, 754 S.W.2d 149, 151 (Tex. 1988) (citing *Murphy v. Hunt*, 455 U.S. 478 (1982) (per curiam)). Because there is no longer a dispute between the parties regarding the application of the Election Code to the facts, the Court should render judgment dismissing the cause.

### **PRAYER**

The Court should render judgment dismissing this cause as moot.

Respectfully submitted.

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## **CERTIFICATE OF SERVICE**

On September 7, 2016, this document was served electronically on Joseph Nixon at joseph.nixon@akerman.com.

/s/ Kristofer S. Monson  
KRISTOFER S. MONSON

## **ATTACHMENT**

## CAUSE NO. D-1-GN-15-004455

TEXAS ETHICS COMMISSION,	§	IN THE DISTRICT COURT
	§	
<i>Petitioner,</i>	§	
	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
EMPOWER TEXANS, INC., AND	§	
MICHAEL QUINN SULLIVAN	§	
	§	345th JUDICIAL DISTRICT
<i>Respondents.</i>	§	

**TEXAS ETHICS COMMISSION'S NOTICE OF NONSUIT, WITH PREJUDICE,**  
**AGAINST EMPOWER TEXANS, INC., AND MICHAEL QUINN SULLIVAN**

Texas Ethics Commission ("TEC"), Petitioner, by and through the Office of the Attorney General of Texas, gives written notice of its nonsuit, with prejudice, on all claims against the Respondents, Empower Texans, Inc. and Michael Quinn Sullivan.

**INTRODUCTION**

1. Petitioner, TEC, sued Respondents, Empower Texans, Inc. and Michael Quinn Sullivan, seeking an order compelling compliance with administrative subpoenas.
2. In light of a judicial admission by Respondents,<sup>1</sup> TEC's petition to enforce said administrative subpoenas is moot.

**NOTICE OF NONSUIT**

3. Petitioner asks the Court to sign an order of nonsuit on all its claims against respondents.
4. Petitioner requests a dismissal with prejudice.

**Dated: September 6, 2016.**

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<sup>1</sup> The case of *Empower Texans, Inc., and Michael Quinn Sullivan v. TEC* is currently on appeal before Texas's Third Court of Appeals. No. 03-16-00019-CV. In footnote 1 of their reply brief in that appeal, Empower Texans, Inc. and Michael Quinn Sullivan made a judicial admission which moots the petition to enforce administrative subpoenas.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 6th day of September, 2016, a true and correct copy of the forgoing was filed electronically with the Court, causing electronic service on all counsel of record.

/s/Amanda J. Cochran-McCall

AMANDA J. COCHRAN-MCCALL